Rule 703. Bases of an Expert's Opinion Testimony.

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Comment to 2012 Amendment

The language of Rule 703 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

All references to an "inference" have been deleted on the grounds that the deletion made the rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

Comment to Original 1977 Rule

This rule, along with others in this article, is designed to expedite the reception of expert testimony. Caution is urged in its use. Particular attention is called to the Advisory Committee's Note to the Federal Rules of Evidence which accompanies Federal Rule 703. In addition, it should be emphasized that the standard "if of a type reasonably relied upon by experts in the particular field" is applicable to both sentences of the rule. The question of whether the facts or data are of a type reasonably relied upon by experts is in all instances a question of law to be resolved by the court prior to the admission of the evidence. If the facts or data meet this standard and form the basis of admissible opinion evidence they become admissible under this rule for the limited purpose of disclosing the basis for the opinion unless they should be excluded pursuant to an applicable constitutional provision, statute, rule or decision.

Evidence that is inadmissible except as it may qualify as being "reasonably relied upon by experts in the particular field" has traditionally included such things as certain medical reports and comparable sales in condemnation actions.

Cases

703.010 Expert opinion may be based on objects admitted in evidence and matters not admitted in evidence.

State v. Roque, 213 Ariz. 193, 141 P.3d 368, ¶ 56 (2006) (for charge of first-degree murder, state's theory of case was that shootings were intentional acts of racism while intoxicated, while defendant pursued insanity defense; in assessing defendant's mental health, state's expert considered defendant's 1983 conviction for attempted robbery; court noted that evidence of prior conviction could be disclosed to jurors as forming basis of opinion without regard to its independent admissibility).

Mohave Elec. Coop. v. Byers, 189 Ariz. 292, 942 P.2d 451 (Ct. App. 1997) (in ruling on motion for summary judgment, trial court could consider audit report upon which expert relied).

State v. Curry, 187 Ariz. 623, 931 P.2d 1133 (Ct. App. 1996) (one expert witness permitted to give opinion based in part on child sexual abuse accommodation syndrome research done by another; another expert witness permitted give opinion about victim based on personal examination of victim done by another doctor).

703.030 Questions about the accuracy and reliability of a witness's factual basis, data, and methods go to the weight and credibility of the witness's testimony, and are questions of fact for the jurors' determination.

Logerquist v. McVey (Danforth), 196 Ariz. 470, 1 P.3d 113, ¶¶ 51–52 (2000) (court noted that Arizona Constitution preserved right to have jurors pass upon questions of fact by determining credibility of witnesses and the weight of conflicting evidence).

Pipher v. Loo, 221 Ariz. 399, 212 P.3d 91, ¶¶ 16–18 (Ct. App. 2009) (expert witness testified he was board certified with 35 years' experience, had administered thousands of injections of type at issue, and had number of patients with type of injury at issue; trial court precluded expert's testimony because it concluded testimony lacked foundation, was speculative, and lacked adequate basis under Rules 702 and 703; court held that trial court erred in excluding this testimony and remanded for new trial).

T.W.M. Custom Framing v. Industrial Comm'n, 198 Ariz. 41, 6 P.2d 745, ¶¶ 18–20 (Ct. App. 2000) (decedent-employee committed suicide, and issue was whether decedent-employee's industrial injury so deprived him of normal judgment that his action in committing suicide would not be considered "purposeful" and thus would entitle his widow and child to collect death benefits; psychiatrist conducted psychiatric autopsy and testified that decedent's depressed mental condition resulted from his work-related injuries; employer contended that foundation for psychiatrist's testimony was inadequate because he relied heavily on widow's testimony to formulate his opinions; court noted psychiatrist also relied medical records, police reports, and prior testimony, and concluded there was appropriate foundation for opinion).

Standard Chartered PLC v. Price Waterhouse, 190 Ariz. 6, 945 P.2d 317 (Ct. App. 1996) (in litigation over sale of bank, plaintiff-purchaser claimed that $23 million loss reserve figure supplied by defendant-seller understated amount of uncollectible loans; defendant-seller sought to introduce tax filing made by plaintiff-purchaser 1½ years after sale showing a loss reserve of $9.8 million; trial court excluded this evidence because defendant-seller's expert witness could not testify to what plaintiff-purchaser actually did in preparing tax filing and could only testify about what plaintiff-purchaser should have done; court held that there was sufficient factual basis for the evidence and thus it should have been admitted, and that any dispute about the $9.8 million figure went to weight and not admissibility of opinion).

703.035 An expert may not base an opinion on sheer speculation, thus the trial court should not admit a conclusory opinion based on no facts.

Aida Renta Trust v. Maricopa County, 221 Ariz. 603, 212 P.3d 941, ¶¶ 18–21 (Ct. App. 2009) (taxpayers brought action for property tax discrimination; trial court granted summary judgment for taxpayers concluding that county had engaged in deliberate and systematic conduct that resulted in greatly disproportionate tax treatment; county contended issue of fact was created by affidavit from appraiser employed by county, which stated that she did not know exactly what had happened, but it must have been an accident; court held that, because

opinion in this affidavit was based on speculation, affidavit was not admissible, so it did not create any issue of material fact).

703.060 Facts or data underlying an expert's opinion need not be admissible so long as the party offering the evidence establishes they are of a type upon which experts in that particular field reasonably rely.

State v. Tucker, 215 Ariz. 298, 160 P.3d 177, ¶¶ 52–59 (2007) (state's materials expert testified that duct tape used to gag victim was for industrial use, and testified he based this opinion in part on conversations he had with manufacturer's sales representatives; because information from sales representatives was of type upon which experts would reasonably rely, admission of that information was proper).

State v. Tucker, 215 Ariz. 298, 160 P.3d 177, ¶¶ 45–50 (2007) (defendant contended written descriptions on some photographs in montage of 44 photographs showing corpses and autopsies were hearsay statements; because photographs and statements were not offered to prove truth of matters asserted, statements were not hearsay).

State v. Smith, 215 Ariz. 221, 159 P.3d 531, ¶¶ 21–23 (2007) (to prove the especially heinous, cruel, or depraved aggravating circumstance, state presented testimony of medical examiner, who relied on findings and opinions of medical examiner from 1976; because this was type of information upon which experts in this area reasonable rely, trial court did not err in permitting expert to testify about findings and opinions of medical examiner from 1976).

State v. Rogovich, 188 Ariz. 38, 932 P.2d 794 (1997) (medical examiner testified based on report done by doctor who was no longer on staff; court held such reliance was permissible, and that facts or data need not be generated by a qualified, testifying expert).

Pipher v. Loo, 221 Ariz. 399, 212 P.3d 91, ¶¶ 7–11 (Ct. App. 2009) (court held that trial court properly allowed expert witness to give opinion based on his own laboratory research, his clinical experience, and his interviews with patients and their dentists, even though some of this information was hearsay).

Brethauer v. General Motors Corp., 221 Ariz. 192, 211 P.3d 1176, ¶¶ 18–20 (Ct. App. 2009) (trial court precluded 3-minute videotaped collage of 10 GM-conducted tests on seat belt systems containing same buckle as involved in subject litigation because either other seat belt systems had different types of belts or the circumstances of test were different; plaintiff contended trial court erred in precluding videotape because his expert relied on videotape in forming his opinion; court stated mere reliance by expert on data does not automatically make data admissible).

703.080 An expert witness may disclose the facts or data on direct examination.

State v. Smith, 215 Ariz. 221, 159 P.3d 531, ¶¶ 21–23 (2007) (to prove the especially heinous, cruel, or depraved aggravating circumstance, state presented testimony of medical examiner, who relied on findings and opinions of medical examiner from 1976; because this was type of information upon which experts in this area reasonable rely, trial court did not err in permitting expert to testify about findings and opinions of medical examiner from 1976).

In re Leon G., 199 Ariz. 375, 18 P.3d 169, ¶ 11 (Ct. App. 2001) (because issue was whether person was likely to commit further acts of sexual violence, doctor was permitted to rely on person's past improper sexual activities in forming opinion, and was permitted to disclose factual basis for that opinion).

703.090 An expert witness may disclose the facts or data only for limited purpose of disclosing the basis of the opinion and not as substantive evidence.

State v. Snelling, 225 Ariz. 182, 236 P.3d 409, ¶¶ 18–20 (2010) (victim was killed in 1996, but police did not identify defendant as suspect until 2003; defendant contended medical examiner's testimony in 2007 violated his right of confrontation because she had not performed victim's autopsy in 1996 nor authored autopsy report; medical examiner testified she formed her own opinion and that 1996 autopsy report was only part of basis for her opinion; court held medical examiner's testimony was not hearsay and did not violate defendant's right of confrontation).

State v. Hummert, 188 Ariz. 119, 933 P.2d 1187 (1997) (count noted that otherwise inadmissible scientific evidence would not be admitted as substantive evidence).

703.095 If an expert witness discloses the facts or data only for the limited purpose of disclosing the basis of the opinion, they are not substantive evidence and admission of those facts and data does not violate the right of confrontation.

* *State v. Joseph*, 230 Ariz. 296, 283 P.3d 27, ¶¶ 7–13 (2012) (to prepare for testimony, medical examiner reviewed autopsy report prepared by doctor who did not testify; because (1) autopsy report was not admitted in evidence, (2) medical examiner used facts only as basis of his opinion, and (3) medical examiner formed his own opinion, allowing medical examiner to testify based on that autopsy report did not violate defendant's right of confrontation).

State v. Dixon, 226 Ariz. 545, 250 P.3d 1174, ¶¶ 33–37 (2011) (Dr. H.K. conducted autopsy in 1978; at trial held 11/13/07, Dr. P.K. testified based on his review of autopsy report and photographs, neither of which were admitted in evidence; court rejected defendant's contention that Dr. P.K.'s testimony violated his right of confrontation).

State v. Gomez, 226 Ariz. 165, 244 P.3d 1163, ¶¶ 22–24 (2010) (senior forensic analyst who was laboratory supervisor testified in detail about laboratory's operating procedures, standards, and safeguards, and although she did not witness all steps in process, she checked technicians' records for any deviations from laboratory's protocols, and then personally performed final step in process, interpretation and comparison, which was only step that required human analysis; court held senior analyst's testimony did not violate Confrontation Clause).

State v. Snelling, 225 Ariz. 182, 236 P.3d 409, ¶¶ 18–20 (2010) (victim was killed in 1996, but police did not identify defendant as suspect until 2003; defendant contended medical examiner's testimony in 2007 violated his right of confrontation because she had not performed victim's autopsy in 1996 nor authored autopsy report; medical examiner testified she formed her own opinion and that 1996 autopsy report was only part of basis for her opinion; court held medical examiner's testimony was not hearsay and did not violate defendant's right of confrontation).

State v. Smith, 215 Ariz. 221, 159 P.3d 531, ¶¶ 21–23, 26 (2007) (to prove the especially heinous, cruel, or depraved aggravating circumstance, state presented testimony of medical examiner, who relied on findings and opinions of medical examiner from 1976; because this was type of information upon which experts in this area reasonable rely, trial court did not err in permitting expert to testify about findings and opinions of medical examiner from 1976, and this testimony did not violate Confrontation Clause).

703.110 Although an expert witness is allowed to disclose facts or data not admissible in evidence if they are of the type upon which experts reasonably rely, the expert should not be allowed to act merely as a conduit for the other expert's opinion and thus circumvent the requirements excluding certain types of hearsay statements.

State v. Gomez, 226 Ariz. 165, 244 P.3d 1163, ¶¶ 22–23 (2010) (senior forensic analyst who was laboratory supervisor testified in detail about laboratory's operating procedures, standards, and safeguards, and although she did not witness all steps in process, she checked technicians' records for any deviations from laboratory's protocols, and then personally performed final step in process, interpretation and comparison, which was only step that required human analysis; court held senior analyst formed her own opinion and did not act merely as conduit for opinions of others).

State v. Snelling, 225 Ariz. 182, 236 P.3d 409, ¶¶ 18–20 (2010) (victim was killed in 1996, but police did not identify defendant as suspect until 2003; defendant contended medical examiner's testimony in 2007 violated his right of confrontation because she had not performed victim's autopsy in 1996 nor authored autopsy report; medical examiner testified she formed her own opinion and that 1996 autopsy report was only part of basis for her opinion; court held medical examiner's testimony was not hearsay and did not violate defendant's right of confrontation).

State v. Smith, 215 Ariz. 221, 159 P.3d 531, ¶¶ 21–25 (2007) (to prove the especially heinous, cruel, or depraved aggravating circumstance, state presented testimony of medical examiner, who relied on findings and opinions of medical examiner from 1976; because record showed testifying medical examiner formed own opinion based on facts and evidence in addition to findings and opinions of previous medical examiner, testifying medical examiner did not act merely as conduit for previous medical examiner's findings and opinions).

In re Thomas R., 224 Ariz. 579, 233 P.3d 1158, ¶¶ 39–41 (Ct. App. 2010) (in SVP proceeding, expert based opinion on numerous factors, one of which was other expert's DNA report; because other expert's conclusion in DNA report was only one of several factors upon which testifying expert relied, testifying expert did not act merely as conduit for other expert's opinion).

703.130 Once an expert has given an opinion, the other party may cross-examine the expert about matters the expert considered but rejected in forming the opinion.

Standard Chartered PLC v. Price Waterhouse, 190 Ariz. 6, 945 P.2d 317 (Ct. App. 1996) (in litigation over sale of bank, plaintiff-purchaser claimed that $23 million loss reserve figure supplied by defendant-seller understated amount of uncollectible loans; defendant-seller sought to introduce tax filing made by plaintiff-purchaser 1½ years after sale showing a loss reserve of $9.8 million; trial court excluded this evidence because defendant-seller's expert witness could not testify to what plaintiff-purchaser actually did in preparing tax filing and could only testify about what plaintiff-purchaser should have done; court held there was sufficient factual basis for the evidence and thus it should have been admitted, and that plaintiff-purchaser could have used any contrary evidence in cross-examination).

703.140 An expert witness may not be cross-examined on the basis of facts or data upon which the expert did not rely in formulating the opinion, when the material is itself inadmissible.

Cervantes v. Rijlaarsdam, 190 Ariz. 396, 949 P.2d 56 (Ct. App. 1997) (although expert read report, he did not consider or rely on it, thus trial court properly precluded cross-examining expert about report).

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